THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.31124 OF 2018

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

Heard Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the petitioner, and Sri B.Narasimha Sarma, learned Senior Standing Counsel appearing on behalf of the second respondent, and, with their consent, the Writ Petition is disposed of at the stage of admission.

The proceedings, under challenge in this Writ Petition, is the notice dated 23.07.2018 whereby the petitioner was called upon to show cause why service tax of Rs.66,01,726/-, for the period from 01.04.2013 to 30.06.2017, should not be demanded from them in terms of Rule 6 of the Service Tax Rules, 1994 read with the proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 ("the Act" for brevity), along with interest and penalty. The petitioner was also directed to produce, at the time of showing cause, all the evidences upon which they intended to rely in support of their defence.

Service tax was demanded on the 5% rebate offered to the petitioner by the Department of Posts and Telegraphs towards franking charges. As part of the pre-show cause consultative process, the respondents called upon the petitioner herein to explain why they should not pay service tax on the rebate offered to them by the Department of Posts and Telegraphs towards franking services. The petitioner relied on the order of the CESTAT, Mumbai, in **United Mailing Services v. Commissioner**

of Service Tax, Mumbai[1], in support of its submission that the rebate offered for franking does not amount to a "service" liable to tax under the Act.

Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the petitioner, would draw our attention to the letter addressed by them to the authorities concerned wherein specific reference is made to the order of the Mumbai Tribunal. He would also refer to the proceedings of the Audit Officer which discloses that, though he was made aware of the order of CESTAT, the audit officer did not deal with it. Learned Senior Counsel would submit that no useful purpose would be served in submitting a reply to the show cause notice; in the earlier letters addressed by the petitioner, in reply to the communications received from the respondents, a specific reference was made to this order of the Tribunal; despite taking note of the order of CESTAT, Mumbai, the applicability of the said decision has not been examined by the authorities concerned; judicial discipline requires every authority, lower than the Tribunal, to abide by the decision of the Tribunal; and it is not open to the respondents to levy service tax contrary to the law declared by the Tribunal, save where there are judgments of a High Court or the Supreme Court to the contrary.

While Sri B.Narasimha Sarma, learned Senior Standing Counsel, would submit that the judgment of the Mumbai Tribunal, in **United Mailing Services**[1], has no application, it is wholly unnecessary for us to examine the order of the CESTAT, Mumbai or to dwell on whether the said order covers the issue on hand, since these are all matters which the competent authority is

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[1] **2016(42) S.T.R. 924**

required to consider. As the proceedings under challenge in this Writ Petition is merely a show cause notice, we consider it appropriate to permit the petitioner to submit their reply thereto making a specific reference to the order of the CESTAT, Mumbai in **United Mailing Services**[1]. Sri A.Sudershan Reddy, learned Senior Counsel, would submit that, following this order of the Mumbai Tribunal, the CESTAT, Chennai, in **M/s. Mail Related Services v. Commissioner of Service Tax, Chennai** (Appeal No.ST/00199/2010 dated 20.06.2018), has taken a similar view.

On the petitioner filing their reply to the show cause notice placing reliance on the aforesaid two judgments of the CESTAT, Mumbai and Chennai, within three (3) weeks from today, the competent authority shall consider the contents of the reply submitted by the petitioner to the show cause notice; examine whether the aforesaid two orders of CESTAT Mumbai and Chennai are applicable; and assign reasons for his agreement/disagreement with the view taken by both the Tribunals in the aforesaid two orders.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

5th September 2018

NOTE: Issue CC by Monday
B/O
RRB